

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRANSPORTATION INSURANCE
COMPANY and NATIONAL FIRE
INSURANCE COMPANY OF HARTFORD,
both Illinois companies, and as Insurers and
Subrogees of The Dailey Company,

Plaintiffs

-vs-

Case No.: 2:08-cv-15018
Hon. Julian Abele Cook

CITIZENS INSURANCE COMPANY OF
AMERICA, a Michigan corporation, and
Insurer of Giannola Masonry Company.

Defendant.

DAWSON & CLARK, P.C.
Donald H. Dawson, Jr. (P29692)
Kathleen A. Clark (P43295)
Attorneys for Plaintiff
243 W. Congress, Suite 600
Detroit, MI 48226
(313) 256-8900

COLLINS, EINHORN, FARRELL & ULANOFF
Timothy F. Casey (P31836)
Deborah A. Hebert (P34964)
Attorney for Defendant
4000 Town Center, Ste. 909
Southfield, MI 48075
(248) 355-4141

**CITIZENS' EMERGENCY MOTION FOR APPROVAL OF SUPERSEDEAS BOND
AND ORDER OF STAY ON APPEAL**

Citizens Insurance Company, through its attorneys, seeks (1) approval of the Supersedeas Bond proposed in this motion and (2) an order of stay pending appeal upon the filing of that bond, as allowed by Fed. R. Civ. P. 62(d). This motion is being filed as an emergency motion because the time for filing the bond on appeal is **September 12, 2013**. In support, Citizens states as follows:

1. On August 29, 2013, this Court issued its final order resolving plaintiffs' sole remaining claim against Citizens Insurance Company. Pursuant to that final order, there now is a Judgment of \$5,000,000 entered on March 7, 2013, subject to post-judgment interest at a rate of 0.17%, or \$23.28 a day, as determined by this Court's final order of August 29, 2013.

2. Citizens desires to appeal the March Judgment and has timely filed a Notice of Appeal on September 9, 2013.

3. Citizens now seeks a stay of execution of the March 7, 2013 Judgment and post-judgment interest pending the appeal, and in support of that request, proposes to timely file with this Court a Supersedeas Bond in the form approved for use in state courts. A copy of the bond to be executed and filed is attached to this motion as exhibit A.

4. The proposed appeal bond is in the amount of \$5,025,000. This will guarantee payment of the \$5,000,000 Judgment if affirmed on appeal. The additional \$25,000 will secure payment of post-judgment interest at a rate of \$23.28 a day (or \$8500 per year), as well as all taxable costs that may be assessed by the Court of Appeals at the conclusion of the appeal. The 6th Circuit almost always decides appeals within two years of the date of the filing of the Notice of Appeal, which would require less than \$17,000 in security for the post-judgment interest. Furthermore, plaintiffs are not likely to incur any taxable appellate costs because *defendant* is obligated to pay the costs that are typically taxable (e.g., appellate filing fee, transcript costs), and the 6th Circuit does not allow the recovery of copy costs in e-filed cases. *See* Fed. R. App. P. 39, as supplemented by 6 Cir. R. 39 ("Costs are not available for electronic filings.")

5. As required by this Court's order of August 29, 2013, Citizens has obtained a bond from a different qualified insurance carrier, The Hanover Insurance Company, which is a New Hampshire company licensed to do business in Michigan (NAIC No. 22292). *See* the

Michigan Department of Insurance and Financial Services (DIFS) listing for The Hanover Insurance Company, Exhibit B.

6. The Hanover Insurance Company is also authorized by the U.S. Department of Treasury to issue surety bonds required under federal law. See the U.S. Department of Treasury's Listing of Certified Companies, Exhibit C.

7. Counsel for Citizens is, this same date, seeking concurrence from opposing counsel for the filing of this proposed bond and counsel is in the process of reviewing this matter with their clients. Citizens is moving ahead with this motion before the response, however, because of the tight time-frame imposed by court rule for filing appeal bonds. This time-frame was further shortened by the long holiday weekend that immediately followed the issuance of the final order in this case. **The appeal bond must be filed by September 12, 2013.**

WHEREFORE, Citizens asks this Court to approve the Bond proposed in Exhibit A. This bond will be executed by Hanover officials, with the original sent by overnight mail. Citizens also asks this Court to stay further proceedings on the judgment, effective upon the filing of the Supersedeas Bond and continuing until the 6th Circuit Court of Appeals issues its mandate concluding the appeal or alternatively, until the case is dismissed on appeal.

Respectfully submitted,

COLLINS EINHORN FARRELL

/s/ Deborah A. Hebert

TIMOTHY F. CASEY (P31836)

DEBORAH A. HEBERT (P34964)

Attorneys for Defendant Citizens Insurance Co of America

4000 Town Center, Suite 909

Southfield, MI 48075

(248) 355-4141

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRANSPORTATION INSURANCE
COMPANY and NATIONAL FIRE
INSURANCE COMPANY OF HARTFORD,
both Illinois companies, and as Insurers and
Subrogees of The Dailey Company,

Plaintiffs

-vs-

Case No.: 2:08-cv-15018
Hon. Julian Abele Cook

CITIZENS INSURANCE COMPANY OF
AMERICA, a Michigan corporation, and
Insurer of Giannola Masonry Company.

Defendant.

DAWSON & CLARK, P.C.
Donald H. Dawson, Jr. (P29692)
Kathleen A. Clark (P43295)
Attorneys for Plaintiff
243 W. Congress, Suite 600
Detroit, MI 48226
(313) 256-8900

COLLINS, EINHORN, FARRELL & ULANOFF
Timothy F. Casey (P31836)
Deborah A. Hebert (P34964)
Attorney for Defendant
4000 Town Center, Ste. 909
Southfield, MI 48075
(248) 355-4141

**MEMORANDUM OF LAW IN SUPPORT OF CITIZENS' MOTION FOR
APPROVAL OF SUPERSEDEAS BOND AND ORDER OF STAY ON APPEAL**

This motion is filed pursuant to Fed. R. Civ. P. 62(d):

(d) Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2) [not applicable]. The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

As noted by the 6th Circuit Court of Appeals in *Arban v. West Pub. Corp.*, 345 F.3d 390, 409 (6th Cir. 2003), "Rule 62(d) entitles a party who files a satisfactory supersedeas bond to a stay of

money judgment as a matter of right,” citing *Federal Prescription Serv., Inc. v. Am. Pharm. Ass’n*, 636 F.2d 755, 759 (D.C. Cir. 1980), citing *Am. Mfr. Mut. Ins. Co. v Am. Broad. Paramount Theatres, Inc.*, 385 U.S. 931, 87 S.Ct. 291, 17 L.Ed.2d 213 (1966).

Citizens Insurance Company of America is a Michigan company based in Howell. It proposes to file an appeal bond in the form routinely used in Michigan state courts to secure money judgments pending appeal (the federal courts do not have an equivalent form). The bond will be issued by The Hanover Insurance Company, a New Hampshire company expressly authorized by the Michigan Insurance Commissioner to do business in Michigan (see Exhibit B) and further authorized by the United States Department of Treasury to issue appeal bonds for filing in the federal courts (see Exhibit C). Under the mandate of 31 U.S.C. §9304, the Department of Treasury must certify sureties to be used where “a law of the United States Government requires or permits a person to give a surety bond through a surety.” Exhibit C is a partial list of those sureties. A bond from The Hanover Company will fulfill this Court’s requirement of security from a separate qualified carrier.

Finally, the amount of the bond is more than sufficient to secure payment of both the judgment and any post-judgment interest accruing during the appeal, as well as any costs that may be assessed by the Court of Appeals. As noted by this Court in its final order of August 29, 2013, post-judgment interest will accrue at an annual rate of 0.17%, which is \$23.28 per day. This amounts to just under \$8500 a year. Appeals to the 6th Circuit are generally decided within two years of the date of the filing of the appeal, which makes it unlikely that post-judgment interest will even reach as high as \$17,000. As to taxable costs, the federal court rules generally allow the prevailing party to recover costs incurred in preparing and transmitting the record on appeal, transcript fees, the notice of appeal filing fee, and premiums paid for a bond. Plaintiffs

have incurred none of these costs because they are the Appellees. Any costs to which they would be entitled necessarily will be very minimal.

WHEREFORE, Defendant Citizens Insurance Company of America asks this Honorable Court to approve the filing of the Supersedeas Bond in the form attached to this motion as Exhibit A and to issue an order staying any further proceedings in this Court, commencing with the filing of the executed Supersedeas Bond and continuing through the date of the 6th Circuit mandate concluding the appeal or through the date of any order dismissing the appeal prior to a decision.

Respectfully submitted,

COLLINS EINHORN FARRELL

/s/ Deborah A. Hebert

TIMOTHY F. CASEY (P31836)

DEBORAH A. HEBERT (P34964)

Attorneys for Defendant Citizens Insurance Co of America

4000 Town Center, Suite 909

Southfield, MI 48075

(248) 355-4141

Deborah.hebert@ceflawyers.com

CERTIFICATE OF SERVICE

I certify that on September 9th, 2013 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the U.S. mail, postage prepaid, to their address of record.

/s/ Deborah A. Hebert